IN THE COURT OF APPEALS FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

Ceilia F. Hall v. Metropolitan Government of Davidson County, Tennessee, et al

Direct Appeal from the Davidson County Chancery Court
No. 98-2328-1 Chancellor Ellen Hobbs Lyle

No. M1999-01590-COA-R3-CV - Filed October 25, 2000

On September 11, 1997, Dr. Bill M. Wise, Director of Schools for the Metropolitan Nashville Public Schools, sent Appellant Cecilia F. Hall ("Ms. Hall") a letter informing her that he had presented charges against her to the Metropolitan Board of Public Education ("Board") recommending her dismissal. Ms. Hall requested in writing a hearing before the Board concerning the charges brought against her. The Board convened for the hearing on March 17, 1998. Before the hearing the two parties reached what they thought was an adequate settlement. However, the proposed settlement agreement was never signed by Ms. Hall. Subsequently, the Board terminated Ms. Hall on June 1, 1998. Ms. Hall filed a Petition for Writ of Certiorari with the Davidson County Chancery Court seeking judicial review pursuant to Tenn. Code Ann. § 49-5-513. The Board filed a Motion for Summary Judgment on the grounds that Ms. Hall waived her right to hearing and was properly terminated. The trial court granted the Board's motion. On October 28, 1999, Ms. Hall filed a Notice of Appeal and this litigation resulted.

Tenn.R.App.P.3 Appeal as of Right; Judgment of the Chancery Court Part III Reversed

Ash, Special Judge Don R., delivered the opinion of the court, in which Judge CRAWFORD and Judge FARMER, joined.

Brenda Rhoton Little and Stephen C, Crofford, Nashville, Tennessee, for the appellant, Cecilia F. Hall.

WM. Michael Safley, Nashville, Tennessee, for the appellee, Metropolitan Government of Nashville and Davidson County, Tennessee, et al.

OPINION

I.

Ms. Hall was a tenured teacher with the Metropolitan Nashville Public Schools. On September 11, 1997, the Director of Schools, Bill Wise ("Dr. Wise"), notified Ms. Hall he was recommending her termination to the Board. The Board sent Ms. Hall a letter listing the charges against her and the recommendation for dismissal. The charge against Ms. Hall was insubordination. This allegation was based on her repeated failure to follow Board procedure regarding corporal punishment. The Board's charge of insubordination states:

> The charge of insubordination is justified by Ms. Hall's repeated Failure to comply with regulations, policies and/or directives of the Metropolitan Board of Public Education, her assigned schools and Principals concerning the imposition of corporal punishment. Ms. Hall has had numerous opportunities to bring her conduct into compliance with said regulations, policies and/or directives, but has continuously failed to do so.

On October 7, 1997, Ms. Hall requested a formal hearing concerning the charges filed against her before the Board. The Board met on March 17, 1998, to conduct the hearing. A settlement conference was held prior to the hearing, whereas both parties reached an oral settlement agreement regarding the charges presented against Ms. Hall. The settlement agreement was reached in the presence of Hall, Dr. Wise, and counsel for both of the parties. Ms. Hall agreed, *inter alia*, to forego the Board hearing and return to work as a classified employee.

The settlement agreement was condensed to writing by the Board's counsel, and sent to Ms. Hall and Ms. Fontecchio ("Attorney Fontecchio"), Hall's previous attorney. Hall never signed the purported settlement agreement. Ms. Hall alleged that the agreement differed substantially from the proposed settlement agreed to on March 17, 1998. The settlement document stated "Ms. Hall will resign or else be terminated immediately for insubordination, without requesting a Board hearing, if she ever again imposes corporal punishment on a Metropolitan Public School student without following the Metropolitan Board of Public Education's policy concerning the imposition of corporal punishment."

The settlement discussion included the fact that the settlement was reached in lieu of the hearing. In a deposition administered by the Board, Attorney Fontecchio provided the following:

> Q. Did they ever communicate to Ms. Hall, they being counsel for metro or Dr. Wise, that if you don't sign the settlement agreement we'll be sending to you, you will be forfeiting your right to a hearing?

A. The discussion was that by entering into the agreement that night at the hearing, she was waiving her right to a hearing, and instead we were entering into the agreement that night. There was no discussion about what was going to happen the next day. Whatever was going to happen the next day. Whatever was going to happen the next day was simply going to memorialize what actually in fact took place that night.

(R., Fontecchio Depo.,pp. 38-39).

Q. …Was there a discussion about the ability to waive or release certain hearing rights?

A. Yes

Q. What was the discussion as you—the discussion that was held on that?

A. There was a discussion about—I'm trying to remember. There was a discussion among all present, that this agreement was a compromise and settlement, and that it was being entered into by the parties in lieu of a hearing, and that by doing this Ms. Hall was waiving her right to a hearing.

(R., Fontecchio Depo., p. 69).

Ms. Hall alleges that there was no communication after March 17, 1998, from Metro Legal or the Board, informing her that if she did not make a second request for a hearing, she would not receive the hearing as previously requested. On March 23, 1998, a document memorializing the settlement agreement and a letter was sent to Attorney Fontecchio. The letter provided instructions for Ms. Hall to review and execute the settlement agreement. Ms. Hall did not sign the proposed agreement. On April 8, 1998, the Board sent another letter inquiring about the status of the agreement. Thereafter, Attorney Fontecchio sent the Board's counsel on April 10, 1998, a letter stating:

> Upon receipt of your proposed settlement, I discussed it with my client, and at the time she felt she needed some time to think about all of the ramifications of this case before authorizing me to sign the agreement.
>
> I will let you know as soon as I hear something from her. If she chooses not to follow through with the agreement which we reached, then it is my assumption that she will be retaining another attorney to represent her. I will let you know if and when I have further information.

Without communication from either Ms. Hall or Attorney Fontecchio, on June 1, 1998, Dr. Wise sent Ms. Hall notice of her termination for failure to sign the settlement agreement regarding the charges against her. The letter from Dr. Wise provides:

> Pursuant to your request, a hearing was scheduled before the Metropolitan

> board of Public Education concerning the charges that have been brought against you. On March 17, 1998, immediately prior to the hearing, you and your attorney requested an opportunity to meet with me to see if the matter had been resolved by agreement and that the hearing would not be held.
>
> Subsequently, a document memorializing the terms of the agreement was prepared by the Metropolitan Department of Law and provided to your attorney. However, you never signed the agreement, reported to work in accordance with terms of the agreement, requested another hearing, nor made any other overture to the School System. As the Board had previously certified the charges as providing grounds for termination, effective today your employment with the Metropolitan Public Schools has been terminated.

Subsequently, Ms. Hall filed a Petition for Writ of Certiorari in retaliation to the Board's action. During the pendency of the trial, Ms. Hall's response to the undisputed facts provided the following:

> Petitioner's counsel was of the opinion that the document reflected the terms of the settlement, but needed clarification on one point. RESPONSE: Disputed. Ms. Fontecchio testified that the document reflected some terms of the settlement negotiations, and needed some clarifying language. She further testified that the document, as written, was inconsistent with her understanding of the verbal agreement reached.

The trial court granted Summary Judgment in favor of the Board. This appeal followed.

II.

The first issue before this Court is whether the trial court erred in granting the Board summary judgment based on a genuine issue of material fact. Judicial review of the trial court's decision to grant summary judgment is *de novo*, thus, no presumption of correctness is attached to their judgment. **Warren v. Estate of Kirk**, 954 S.W.2d 722, 723 (Tenn. 1997). That reference leads to Tenn. R. Civ. P. 56.03: "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." If the court finds there is no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law, the court must affirm summary judgment held by the trial court. **Byrd v. Hall**, 847 S.W.2d 208, 211 (Tenn. 1993). Summary judgment must be denied when there is a legitimate dispute as to any material fact. **Id.**

When evaluating summary judgment motions, the Court in **Byrd** established three elements to help make a determination: "(1) whether a factual dispute exists; (2) whether that fact is material; and (3) whether that fact creates a genuine issue for trial." **Id.** at 214. The party seeking summary judgment carries the burden of persuading the court that no genuine issues of material fact exist. **Id.** at 215. Furthermore, provided the moving party

satisfies their burden, the burden shifts to the nonmoving party to set forth specific facts to show there is a genuine issue of material fact. **Id.**

Moreover, the court will find a disputed fact material if "it must be decided in order to resolve the substantive claim or defense at which the motion is directed." **Id.** at 215. Additionally, when the evidence establishes a disputed material fact, the court must then determine whether the fact reveals a genuine issue. **Id.** The appropriate test to determine a genuine issue is whether a reasonable jury can decide a fact in favor of one party or the other. **Id.** Further, the court must view the evidence in a favorable light to the nonmoving party when making this determination. **Id.**

In this case, the heart of the litigation hinges on Ms. Hall's response to the undisputed facts. (supra) Ms. Hall's response to the undisputed facts clearly indicate that Attorney Fontecchio testified that the written document presented to her was inconsistent with her understanding of the verbal agreement they reached on March 17, 1998. When Attorney Fontecchio opined at the deposition that terms of the settlement, albeit one point, needed clarification created a genuine issue of material fact. Like the Court in **Byrd**, we are of the opinion that these facts are material because they "must be decided in order to resolve the substantive claim."

Furthermore, an enforceable oral contract does not exist when there are differing versions of the contract because of a lack of mutual assent between the parties. **Castelli v. Lien**, 910 S.W.2d 420, (Tenn. App. 1995). Here, the record reflects that both parties disagree as to the circumstances surrounding the settlement agreement and it's terms. Therefore, we conclude that a genuine issue of material fact does exist and the trial court erred in granting summary judgment in favor of the Board.

III.

The second issue before this Court is whether the first request for a hearing remained alive throughout the subsequent proceeding leading to Ms. Hall's termination. T.C.A. § 49-5-512 provides procedures to be followed concerning the termination.

A tenured teacher's rights and obligations to a hearing set forth in T.C.A. § 49-5-512 provide, in pertinent part:

> (a) A teacher, having received notice of charges pursuant to § 49-5-511, may, within thirty (30) days after receipt of notice, demand a hearing before the board, as follows:
> (1) **The teacher shall give written notice to the superintendent of the teacher's request for hearing** (emphasis added);
> (2) The superintendent shall, within five (5) days after receipt of request, indicate the place of such hearing and set a convenient date, which date shall not be later than thirty (30) days following receipt of notice demanding a hearing;

(3) The teacher may appear at the hearing and plead the teacher's cause in person or by counsel;
(4) The teacher may present witnesses, and shall have full opportunity to present the teacher's contentions and to support them with evidence and argument. **The teacher shall be allowed a full, complete, and impartial hearing before the board, including the right to have evidence deemed relevant by the teacher included in the record of the hearing, even if objected to by the person conducting the hearing** (emphasis added);

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It is a well-established rule of law in Tennessee that a release must be in writing and signed by the parties. **Simpson v. Moore**, 65 Tenn. 371 (Tenn. 1873). Here, Ms. Hall did not sign the proposed agreement nor did she sign a release waiving her rights to a hearing. That brings us to the integral part of our analysis of whether Ms. Hall is entitled to have her hearing reconvened because of the circumstances surrounding the settlement. The Board contends that Hall waived her right to a hearing and that her termination was proper. We are not persuaded by the Boards argument.

While the statute does not speak to the specific circumstances presented in this case, nevertheless the burden is on the teacher to give written notice for a hearing. Although the proposed settlement alluded to the fact that Ms. Hall would forego a hearing, a settlement was never reached. The waiver was contingent upon the parties reaching a settlement. It seems inequitable to make the request for a hearing be in writing, but the subsequent waiver not be in writing.

The trial court in making their determination extrapolated principles and effectively formed a new requirement for a second request for a hearing. Accordingly, the trial court stated:

> Extrapolating from these principles to the case at bar, the Court concludes that it was the petitioner's obligation, after she waived the original hearing, to formally request, in a timely manner, another hearing if she believed that the release was not in conformity with the agreement and the settlement was void.

Absent any clear statutory language, the trial court may deduce principles of law if no authority exists, however, the statute provides that once an individual makes a formal request for hearing, that hearing must take place. Further, the statute is silent of any language requiring Ms. Hall to make a second request for a hearing before the Board. In essence, the trial court had no statutory authority to infer these principles and add additional non-statutory requirements on tenured teachers.

IV.

We conclude that Ms. Hall's initial request for a hearing remained alive throughout the proceedings. Additionally, we are of the opinion that Ms. Hall did not waive her right to a hearing and does not thereby preclude her from pursuing her case. Further, we find there is a genuine issue of material fact present and the trial court erred in finding summary judgment in favor of the Board. In view of the foregoing, the judgment of the trial court below is reversed and the case remanded for further proceedings consistent with this opinion. Costs of this appeal are assessed against the Board.

Judge Don R. Ash